

Regular Session, 2010

HOUSE BILL NO. 1156

BY REPRESENTATIVE HENRY BURNS

CHILDREN/CUSTODY: Provides for the "Military Parent and Child Custody Protection Act"

1 AN ACT

2 To enact Subpart H of Part III of Chapter 1 of Code Title V of Code Book I of Title 9 of the
3 Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:359 through 359.12,
4 relative to child custody; to provide for the Military Parent and Child Custody
5 Protection Act; to provide for definitions; to provide for temporary modifications of
6 custody orders; to provide for evidence; to provide duties to disclose certain
7 information; to provide for the appointment of counsel; to provide for attorney fees;
8 and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Subpart H of Part III of Chapter 1 of Code Title V of Code Book I of Title
11 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:359 through 359.12, is
12 hereby enacted to read as follows:

13 SUBPART H. MILITARY PARENT AND CHILD CUSTODY PROTECTION ACT

14 §359. Short title

15 This Subpart may be cited as the "Military Parent and Child Custody
16 Protection Act".

17 §359.1 Definitions

18 A. As used in this Subpart, the following terms shall have the following
19 meanings:

20 (1) "Deploying parent" means a parent of a minor child whose parental rights
21 have not been terminated by a court of competent jurisdiction who is deployed or

1 has received written orders to deploy with the United States military or any reserve
2 component thereof.

3 (2) "Deployment" means military service in compliance with mandatory
4 written orders, unaccompanied by any family member, for combat operations,
5 contingency operations, peacekeeping operations, temporary duty, a remote tour of
6 duty, or other active service.

7 (3) "Order" means any custody or visitation judgment, decree, or order
8 issued by a court of competent jurisdiction in this state or any judgment of another
9 state which has been made executory in this state.

10 §359.2. Final order; modification prohibited

11 The court shall not enter a final order modifying the existing terms of a
12 custody or visitation order until ninety days after the termination of deployment.

13 §359.3. Material change in circumstances

14 Deployment or the potential for future deployment alone shall not constitute
15 a material change in circumstances for the modification of a custody or visitation
16 order.

17 §359.4. Temporary modification

18 A. An existing order of custody or visitation may be temporarily modified
19 to reasonably accommodate the deployment of a parent. Any such order issued in
20 accordance with the provisions of this Subpart shall be entered as a temporary order
21 by the court.

22 B. A temporary modification order shall grant the deploying parent
23 reasonable custody or visitation during periods of approved military leave.

24 C. A temporary modification order shall specify that deployment is the
25 reason for modification and shall require the other parent to provide the court and the
26 deploying parent with written notice thirty days prior to a change of address or
27 telephone number.

28 D. The court shall have an expedited hearing on any custody or visitation
29 matters, upon the motion of a deploying parent and for good cause shown, when

1 military duties have a material affect on the ability of the deploying parent to
2 personally appear.

3 §359.5. Termination of temporary modification order

4 A. A temporary modification order terminates by operation of law upon the
5 completion of deployment, and the prior order shall be reinstated. If the other parent
6 has relocated with the child in accordance with the provisions of R.S. 9:355.1 et seq.,
7 custody or visitation shall be exercised where the child resides, pending further
8 orders of the court.

9 B. Notwithstanding the provisions of Subsection A of this Section, the court
10 may have an expedited hearing regarding the termination of the temporary
11 modification order and the reinstatement of the prior order within ten days of the
12 filing of a motion alleging immediate danger or irreparable harm to the child. The
13 parent filing the motion shall bear the burden of proving that reinstatement of the
14 prior order is not in the best interest of the child.

15 §359.6. Delegation of visitation

16 The court may delegate visitation, upon motion of the deploying parent, to
17 a family member with a substantial relationship to the child if it is in the best interest
18 of the child. Delegated visitation shall not create standing to assert separate
19 visitation rights. Delegated visitation shall terminate by operation of law in
20 accordance with the provisions of R.S. 9:359.5.

21 §359.7. Testimony; evidence

22 The court shall permit the presentation of testimony and evidence by affidavit
23 or electronic means, upon motion of a deploying parent and for good cause shown,
24 when military duties have a material affect on the ability to the deploying parent to
25 personally appear.

26 §359.8. Lack of existing order of custody or visitation

27 When an order establishing custody or visitation has not been rendered and
28 deployment is imminent, upon the motion of either parent, the court shall expedite
29 a hearing to establish a temporary order in accordance with this Subpart.

1 §359.9. Duty to cooperate; disclosure of information

2 A. When military necessity precludes court adjudication prior to deployment,
3 the parties shall cooperate in custody or visitation matters.

4 B. Within ten days of receipt, a copy of the deployment orders shall be
5 provided to the other parent. When the deployment date is less than ten days after
6 receipt of the orders, a copy shall immediately be provided.

7 §359.10. Appointment of counsel

8 When the court declines to grant or extend a stay of proceedings in
9 accordance with the Servicemembers Civil Relief Act, 50 U.S.C. Appendix Section
10 521-522, upon the request of the deploying parent or upon its own motion, the court
11 shall appoint an attorney to represent the child in accordance with the provisions of
12 R.S. 9:345.

13 §359.11. Jurisdiction

14 When a court of this state has issued a custody or visitation order, the absence
15 of a child from this state during the deployment of a parent shall be a "temporary
16 absence" for the purposes of the Uniform Child Custody Jurisdiction and
17 Enforcement Act and this state shall retain exclusive continuing jurisdiction in
18 accordance with the provisions of R.S. 13:1814. The deployment of a parent may
19 not be used as a basis to assert inconvenience of the forum in accordance with the
20 provisions of R.S. 13:1819.

21 §359.12. Attorney fees

22 The court may award attorney fees and costs when either party causes
23 unreasonable delays, fails to provide information required in this Subpart, or any
24 other factor the court considers appropriate.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Henry Burns

HB No. 1156

Abstract: Enacts the "Military Parent and Child Custody Protection Act".

Proposed law provides definitions of "deploying parent," "deployment," and "order."

Proposed law prohibits the court from entering a final order modifying the terms of an existing custody or visitation order until 90 days after the termination of the deployment of a parent.

Proposed law provides that deployment alone shall not constitute a material change in circumstances for the modification of a custody or visitation order.

Proposed law provides that an existing order of custody or visitation may be temporarily modified to make reasonable accommodations necessary for the deployment, and it shall provide the deploying parent with custody or visitation during periods of military leave.

Proposed law requires the other parent to provide the court and the deploying parent with written notice thirty days prior to a change of address and telephone number.

Proposed law provides for an expedited hearing of any custody or visitation matters, upon the motion of a deploying parent and for good cause shown, when military duties have a material effect on the ability of the deploying parent to personally appear at hearing.

Proposed law provides that a temporary modification terminates by operation of law upon the completion of deployment, and requires the prior order to be reinstated.

Proposed law provides that if the other parent has relocated with the child in accordance with R.S. 9:355.1 et seq., custody or visitation shall be exercised where the child resides.

Proposed law authorizes the court to have an expedited hearing regarding the termination of the temporary order and the reinstatement of the prior order if immediate danger or irreparable harm to the child is alleged. Proposed law provides that the parent filing the motion shall bear the burden of proving that reinstatement of the prior order is not in the best interest of the child.

Proposed law authorizes the court to delegate visitation to a family member with a substantial relationship to the child if it is in the best interest of the child.

Proposed law authorizes the court to allow the presentation of testimony and evidence by affidavit or electronic means in certain circumstances.

Proposed law provides that when there is no existing order of custody or visitation, upon the motion of either parent, the court shall expedite a hearing to establish a temporary order in accordance with this Subpart.

Proposed law requires cooperation between the parents and requires a deploying parent to provide a copy of the deployment orders to the other parent.

Proposed law provides for the appointment of counsel for the child when the court declines to grant or extend a stay of proceedings in accordance with the Servicemembers Civil Relief Act, 50 U.S.C. Appendix §521-522.

Proposed law provides that the absence of a child from this state during the deployment of a parent shall be a "temporary absence" for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

Proposed law provides for attorney fees and costs when either party causes unreasonable delays or fails to provide information in accordance with the provisions of proposed law.

(Adds R.S. 9:359-359.12)